IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 32147 of 2005(B)

AGAINST THE ORDER DATED 24/05/2005 IN IA.2228/04 IN OS.383/1993 of MUNSIFF'S COURT, THALASSERY

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PETITIONER:

CHANDANAMKANDY BEEVI (DIED) HER LEGAL HEIR - C.K. ASSU, S/O. LATE BEEVI, AGED 56 YEARS, "KUNHIKANDY HOUSE", KODIYERI AMSOM, DESOM.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.R.O.MUHAMED SHEMEEM
SRI.T.P.SAJID

RESPONDENTS:

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1. OLAVILAKANDY ABOOABCKER (DIED).

2. OLAVILAKANDY SAFIYA, D/O. SAINA, AGED 69 YEARS, THIRUVANGAD AMSOM, NARANGAPURAM DESOM, THALASSERY.

3. OLAVILAKANDY RAHEEM, S/O.KUNHIPATHU, AGED 54 YEARS, THIRUVANGAD AMSOM, NARANGAPURAM DESOM, THALASSERY.

4. OLAVILAKANDY MANHA, D/O. KUNHIPATHU, AGED 57 YEARS, THIRUVANGAD AMSOM, NARANGAPURAM DESOM, THALASSERY.

5. P.K. NABEESSA, D/O. K.PATHUMMA, AGED 64 YEARS, PARAMBATHKANDY HOUSE, THIRUVANGAD, THALASSERY.

6. P.K. AYISSA, D/O. PATHUMMA, AGED 55 YEARS, PARAMBATHKANDY HOUSE, THIRUVANGAD, THALASSERY.

7. P.K. JAMEELA, D/O. PATHUMMA,
AGED 54 YEARS, PARAMBATHKANDY HOUSE,
THIRUVANGAD, THALASSERY.

8. OLAVILAKANDY RABIA, D/O. SAINA,
AGED 62 YEARS, CHALIL CHURCH, CHALIL, THALASSERY.

9. OLAVILAKANDY RABIA, D/O. SAINA,
AGED 71 YEARS, NEAR FRESH PETTIPALAM, NEW MAHE.

10. C.K. SAFIYA, AGED 45,
`GIRIJA NIVAS', KULAM BAZAR, MUZHAPPILANGAD,
KANNUR DISTRICT.

11. C.K. NAZEER, AGED 40 YEARS,
`GIRIJA NIVAS', KULAM BAZAR, MUZHAPPILANGAD,
KANNUR DISTRICT.

12. C.K. SHAMEER, AGED 35 YEARS,
`GIRIJA NIVAS', KULAM BAZAR, MUZHAPPILANGAD,
KANNUR DISTRICT.

BY ADV. SRI.S.MAMMU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.32147/05

APPENDIX

PETITIONER'S EXTS:

Ext.P1 – COPY OF MEDICAL CERTIFICATE DT.30.7.92 FROM APOLLO HOSPITALS, MADRAS.

Ext.P2 – COPY OF REPORT DT.30.7.97 FROM DO.

Ext.P3 – COPY OF REPORT FROM THE DEPT. OF HEMATOLOGY OF APOLLO HOSPITALS, CHENNAI DT.13.10.04.

Ext.P4 – COPY OF ORDER IN I.A.2228/04 IN O.S.NO.383/93 DT.24.5.05 OF MUNSIFF'S COURT, THALASSERY.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.32147 OF 2005

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DATED THIS THE 29TH MAY, 2007

J U D G M E N T

Ext.P4 order by which the learned Munsiff has refused to condone the delay of 505 days which had been occasioned in the matter of filing I.A.No.2228 of 2004, an application seeking impleadment of the legal heirs of the deceased plaintiff is under challenge. The learned Munsiff dismissed the application taking the view that ignorance of law of limitation is not an excuse for condoning the delay and that the delay has not been convincingly explained. The learned Munsiff noticed that the advocate commissioner appointed by the court had visited the suit-properties in the interregnum and therefore at least the 1st petitioner in the I.A. (the petitioner herein) should have been in the know of things. The court also has observed that all the legal heirs of the deceased mother of the petitioner have not been made parties in the impleading petition.

2. I do not know how the learned Munsiff could say that all the legal heirs of the deceased mother of the petitioner were not made parties to I.A.No.2228 of 2004 which is seen filed jointly by the four children of the deceased lady. Even though several contentions were raised to the I.A., it is not contended that the I.A. is bad for non-

joinder of all the legal heirs of the deceased plaintiff. Mr.C.Khalid, learned counsel for the petitioner would assert before me that the petitioner's mother had no legal heirs other than the four persons who are the petitioners in I.A.2228 of 2004. The learned Munsiff, in my opinion, was not justified in stating that all the legal heirs of the deceased mother of the petitioner were not parties in the impleading petition. The learned Munsiff may be right in his view that the explanation offered by the petitioner for condonation of delay was not fully convincing. The visit of the advocate commissioner to the property which was under the possession of the petitioner seems to have weighed with the learned Munsiff considerably. But Exts.P1 to P3 medical reports issued by Apollo Hospital, Chennai will show that the 1st petitioner (the petitioner in this Writ Petition) was undergoing constant treatment from that hospital for serious renal problems. The policy of law is that as far as possible all causes must be got adjudicated on their merits. By condoning the delay the learned Munsiff would have only facilitated disposal of a cause on its merits. The Munsiff should have condoned the delay by putting the petitioner to terms.

3. The result of the discussion is that Ext.P4 is set aside and

I.A.No.2228 of 2004 is allowed on condition that the petitioner deposits a sum of Rs.2500/- before the court below, within a period of one month of his receiving a copy of this judgment, for payment to the contesting respondents and also pays a further sum of Rs.500/- within three weeks from today to the Kerala High Court Legal Services Committee. If deposit/payment is not made as directed above, the impugned order will stand confirmed and the Writ Petition will stand dismissed.

The Writ Petition is disposed of as above. No costs.

(PIUS C. KURIAKOSE, JUDGE)

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